

# NEWS

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**Christopher J. Christie, U.S. Attorney**

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FOR IMMEDIATE RELEASE  
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West Paterson Tax Consultant Sentenced to 52 Months in  
Prison for Defrauding Clients of More Than \$1.5 Million

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(More)

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TRENTON – A West Paterson tax consultant was sentenced to 52 months in federal prison today for defrauding his clients and others of more than \$1.5 million, in part by fraudulently assuring clients that he was negotiating settlements on their behalf with the Internal Revenue Service, U.S. Attorney Christopher J. Christie announced.

U.S. District Judge Garrett E. Brown Jr., also ordered Brian Allen Day, 42, of Montville, whose business, The Tax Consultants, Inc. was in West Paterson, to pay approximately \$1.5 million in restitution to his victims and to serve three years of supervised release upon the completion of his prison sentence. Judge Brown also required Day to pay all back taxes, along with the filing of correct tax returns, and prohibited Day from providing tax preparation services without the approval of probation officials.

At his plea hearing in January 2004, Day admitted taking large sums of money from his clients by representing to them that it would be turned over to the IRS as part of negotiated settlements. Instead, Day simply kept the money for his own use, while continuing to represent to his clients that he was in the process of negotiating with the IRS on their behalf.

The Indictment to which Day pleaded guilty puts the loss to victims at approximately \$392,000. However, during his plea, Day admitted responsibility for more than \$1.5 million in losses to victims. That sum includes money that Day obtained by falsely representing that it would be paid to the IRS, money that Day received as “loans” from his victims, and fees that Day charged for tax preparation services to those he defrauded. Beyond defrauding clients of the Tax Consultants, Day also admitted defrauding the IRS by failing to pay more than \$572,000 in taxes owed by him personally and by his business.

Day pleaded guilty to wire fraud (Count 14), subscribing to a false (1997) personal income tax return (Count 22) and failure to file a corporate income tax return in 1997 (Count 26).

Day defrauded his clients primarily by claiming to represent their interests in the IRS Offer in Compromise (OIC) Program, which permits qualified taxpayers to settle with the IRS for less than the entire amount of tax due to the IRS. Day informed clients that they owed large amounts in tax which could be abated through OIC applications, according to the Indictment. He then instructed his clients to send him checks or instructed them to wire him money for settlements, which he subsequently deposited into his own bank accounts, never paying any of the money to the IRS. In addition, Day altered documents, such as checks made payable by his clients to the IRS, in order to divert payments intended for the IRS into his own accounts.

Day also admitted repeatedly submitting false written statements to and misrepresenting his credentials in proceedings before the IRS, which has specific qualifications for tax preparers before they can represent clients before the agency on tax matters. Specifically, Day claimed that he was a certified public accountant and an attorney. In fact, he was neither. Day also admitted identifying himself on tax returns he filed for his clients, by using other people's social security numbers. In addition, Day filed tax returns using a Electronic Filing Identification Number that he obtained from the IRS in the names of third parties. By making these false statements, Day attempted to evade the suspension of certain tax preparing privileges previously imposed by the IRS.

In determining the actual sentence, Judge Brown consulted the U.S. Sentencing Guidelines, which provide appropriate sentencing ranges that take into account the severity and characteristics of the offense, the defendant's criminal history, if any, and other factors. The judge, however, is not bound by those guidelines in determining a sentence.

Parole has been abolished in the federal system. Defendants who are given custodial terms must serve nearly all that time

Christie credited Special Agents of the IRS Criminal Investigation Division, under the direction of Special Agent in Charge Patricia J. Haynes in Springfield; and agents with the Treasury Inspector General for Tax Administration, Washington, D.C. Field Division, under the direction of Special Agent in Charge Rodney A. Davis; and Special Agents of the FBI, under the direction of Acting Special Agent in Charge Pedro Ruiz, for their investigative efforts in the case.

The case was prosecuted by Assistant U.S. Attorney Bocian of the U.S. Attorney's Office in Trenton.

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Defense Counsel: Jerome A. Ballarotto, Esq.    Trenton